IN THE SUPREME COURT OF THE STATE OF HAWAI`I

In the Matter of the Publication and Distribution of the Hawai`i Standard Civil Jury Instructions	)

ORDER APPROVING PUBLICATION AND DISTRIBUTION OF THE HAWAI`I STANDARD CIVIL JURY INSTRUCTIONS

Upon consideration of the Civil Pattern Jury Instructions Committee's final draft of proposed Civil Jury Instructions (attached),

IT IS HEREBY ORDERED that the proposed Civil Jury Instructions appended hereto are approved for publication and distribution. The instructions shall be referred to as the "Hawai`i Civil Jury Instructions, 1999 edition."

IT IS FURTHER ORDERED that this approval for publication and distribution is not and shall not be considered by this court or any other court to be an approval or judgment as to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai`i, October 11, 1999.

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INSTRUCTION NO. 1.1

PRELIMINARY INSTRUCTIONS OF LAW

It is my duty to give you instructions about the law which applies to this case. Before I do this, I will read some preliminary instructions of law that may help you better understand the case.

You should consider these preliminary instructions together with all the other instructions of law I will give you. If there is any conflict between these preliminary instructions and instructions given at the end of the case, the instructions at the end will control.

INSTRUCTION NO. 1.2

JUROR NOTETAKING

You are allowed to take notes during the presentation of this case. The bailiff will give you note paper and a pen or pencil. You are not required to take notes.

If you choose to take notes, you must follow some important rules:

1. As you take notes, do not distract yourself or your fellow jurors from listening to the evidence.

2. Do not doodle on your note paper or let your notetaking take priority over your duty to pay attention to the witnesses. Do not permit your notetaking to interfere with your listening to the testimony, or with your observation of the witnesses while they testify because your observation of the witnesses is a means you will use to evaluate their honesty.

3. Do not take your notes outside this courtroom. When you leave the courtroom, leave your notes face down on your seat.

4. At the end of this case, when you leave this courtroom to retire to the jury deliberation room, take your notes with you into the jury room. When you leave the jury room during deliberations, leave your notes face down on the table.

5. Keep your notes to yourself. Do not show them to any other person.

6. If there is an inconsistency between your memory

of the evidence and what you have recorded in your notes, treat your memory of the evidence as accurate and controlling.

7. After you have reached a verdict, your notes will be collected by the bailiff and will be destroyed.

Notes are only for a juror’s personal use, to assist the juror in refreshing his or her memory of the evidence. Jurors who do not take notes should rely on their own memory of the evidence and should not be influenced by the fact that another juror has taken notes.

INSTRUCTION NO. 2.1

CONSIDERATION AND APPLICATION OF INSTRUCTIONS

MEMBERS OF THE JURY:

You have heard the evidence in this case. I will now instruct you on the law that you must apply.

You are the judges of the facts. It is your duty to review the evidence and to decide the true facts. When you have decided the true facts, you must then apply the law to the facts.

I will tell you the law that applies to this case. You must apply that law, and only that law, in deciding this case, whether you personally agree or disagree with it.

The order in which I give you the instructions does not mean that one instruction is any more or less important than any other instruction. You must follow all the instructions I give you. You must not single out some instructions and ignore others. All the instructions are equally important and you must apply them as a whole to the facts.

INSTRUCTION NO. 2.2

CONSIDER ONLY THE EVIDENCE

In reaching your verdict, you may consider only the testimony and the exhibits received in evidence.*
The following are not evidence and you must not consider them as evidence in deciding the facts of this case.

1. Attorneys' statements, arguments and remarks during opening statements, closing arguments, jury selection, and other times during the trial are not evidence, but may assist you in understanding the evidence and applying the law.

2. Attorneys' questions and objections are not evidence.

3. Excluded or stricken testimony or exhibits are not evidence and must not be considered for any purpose.

4. Anything seen or heard when the court was not in session is not evidence. You must decide this case solely on the evidence received at the trial.

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* When warranted, additional reference may also be made to jury views, site inspections, matters of judicial notice, and the like.

INSTRUCTION NO. 2.3

OBSERVATIONS AND EXPERIENCE

Even though you are required to decide this case only upon the evidence presented in court, you are allowed to consider the evidence in light of your own observations, experiences, and common sense. You may use your common sense to make reasonable inferences from the facts.

INSTRUCTION NO. 2.4

NO INDEPENDENT INVESTIGATION OR RESEARCH

You must not use any source outside the courtroom to assist you in deciding any question of fact. This means that you must not make an independent investigation of the facts or the law. For example, you must not visit the scene on your own, conduct experiments, or consult dictionaries, encyclopedias, textbooks, or other reference materials for additional information.

INSTRUCTION NO. 2.5

NO FAVORITISM, PASSION, PREJUDICE OR SYMPATHY

It is your duty and obligation as jurors to decide this case on the evidence presented in court and upon the law given to you.

You must perform your duty and obligation without favoritism, passion, or sympathy for any party in the case, and without prejudice against any of the parties.

INSTRUCTION NO. 2.6

NO DISCRIMINATION[**]

Your personal feelings about a party's race, color, religion, age, sex, sexual orientation, marital status, national origin, ancestry or disability are not a proper basis for deciding any issue of fact in this case. You must not allow any personal feelings which you may have about a party to influence your verdict.

[**] This instruction may need revision in cases involving claims of discrimination.

INSTRUCTION NO. 2.7

CONSIDERATION OF BUSINESS ENTITY PARTIES

You must not be prejudiced or biased in favor of or against a party simply because the party is a corporation or other business entity. You must treat business entities the same as you treat individuals. In this case, the [corporate/partnership] plaintiff(s)/defendant(s) is/are entitled to receive the same fair and unprejudiced treatment that an individual plaintiff/defendant would receive under similar circumstances.

INSTRUCTION NO. 2.8

MULTIPLE PARTIES

Each plaintiff in this case has separate and distinct rights. You must decide the case of each plaintiff separately, as if it were a separate lawsuit. Unless I tell you otherwise, these instructions apply to all of the plaintiffs.

Similarly, each defendant in this case has separate and distinct rights. You must decide the case of each defendant separately, as if it were a separate lawsuit. Unless I tell you otherwise, these instructions apply to all of the defendants.

INSTRUCTION NO. 2.9

REMARKS OF THE COURT

If any of these instructions, or anything I have said or done in this case makes you believe I have an opinion about the facts or issues in the case, the weight to be given to the evidence, or the credibility of any witness, then you must disregard such belief. It is not my intention to create such an impression. You, and you alone, must decide the facts of this case from the evidence presented in court and you must not be concerned about my opinion of the facts.

INSTRUCTION NO. 3.1

BURDEN OF PROOF

Plaintiff(s) has/have the burden of proving by a preponderance of the evidence every element of each claim that plaintiff(s) assert(s). Defendant(s) has/have the burden of proving by a preponderance of the evidence every element of each affirmative defense that defendant(s) assert(s). In these instructions, whenever I say that a party must prove a claim or affirmative defense, that party must prove such claim or affirmative defense by a preponderance of the evidence, unless I instruct you otherwise.

INSTRUCTION NO. 3.2

BURDEN OF PROOF -- RE NEGLIGENCE

Plaintiff(s) must prove by a preponderance of the evidence that defendant(s) was/were negligent and that such negligence was a legal cause of plaintiff's(s') injuries and/or damages. Plaintiff(s) must also prove the nature and extent of his/her/their injuries and/or damages.

Defendant(s) must prove by a preponderance of the evidence that plaintiff(s) was/were negligent and that such negligence was a legal cause of plaintiff's(s') injuries and/or damages.

INSTRUCTION NO. 3.3

PREPONDERANCE OF THE EVIDENCE

To "prove by a preponderance of the evidence" means to prove that something is more likely so than not so. It means to prove by evidence which, in your opinion, convinces you that something is more probably true than not true. It does not mean that a greater number of witnesses or a greater number of exhibits must be produced.

In deciding whether a claim, defense, or fact has been proven by a preponderance of the evidence, you must consider all of the evidence presented in court by both the plaintiff(s) and the defendant(s). Upon consideration of all the evidence, if you find that a particular claim, defense or fact is more likely true than not true, then such claim, defense, or fact has been proven by a preponderance of the evidence.

INSTRUCTION NO. 3.4

BURDEN OF PROOF -- RE DAMAGES WHERE FAULT ADMITTED[***]

In this case, defendant(s) has/have admitted fault for the incident. The burden is still on plaintiff(s) to prove that defendant's(s') conduct was a legal cause of injury to plaintiff(s), and to prove the nature and extent of any injury suffered.

Therefore, the only questions which you must decide are:

1. Was defendant's(s') conduct a legal cause of injury to plaintiff(s)?
2. If so, what amount of damages, if any, is/are plaintiff(s) entitled to as compensation for that injury?

[***] This instruction is intended for use in personal injury cases only.

INSTRUCTION NO. 3.5

BURDEN OF PROOF -- RE DAMAGES WHERE FAULT ADJUDICATED

In this case, the issue of fault has already been decided against defendant(s). The burden is still on plaintiff(s) to prove that defendant's(s') conduct was a legal cause of injury to plaintiff(s), and to prove the nature and extent of any injury suffered.

Therefore, the only questions which you must decide are:

1. Was defendant's(s') conduct a legal cause of injury to plaintiff(s)?
2. If so, what amount of damages, if any, is/are plaintiff(s) entitled to as compensation for that injury?

INSTRUCTION NO. 3.6

CLEAR AND CONVINCING EVIDENCE

The plaintiff/defendant has the burden of proving certain facts, claims or defenses by "clear and convincing evidence." To "prove by clear and convincing evidence" means to prove by evidence which, in your opinion, produces a firm belief about the truth of the allegations which the parties have presented. It means to prove that the existence of a fact is highly probable.

"Clear and convincing evidence" is a higher requirement of proof than the "preponderance of the evidence" requirement, but it is a lower requirement of proof than the "beyond a reasonable doubt" requirement in criminal cases.

INSTRUCTION NO. 4.1

STIPULATION

Where the attorneys for the parties have stipulated to a fact, you must consider the fact as having been conclusively proved.

INSTRUCTION NO. 4.2

DEPOSITION TESTIMONY

The testimony of a witness has been read into evidence from a deposition. A deposition is the testimony of a witness given under oath before the trial and preserved in written form.

You must consider and judge the deposition testimony of a witness in the same manner as if the witness actually appeared and testified in court in this trial.

INSTRUCTION NO. 4.3

ANSWERS TO INTERROGATORIES

Evidence has been presented in the form of written answers given by a party in response to written questions from another party. The written answers were given under oath by the party. The written questions are called "interrogatories."

You must consider and judge a party's answers to interrogatories in the same manner as if the party actually appeared and testified in court in this trial.

INSTRUCTION NO. 4.4

VIOLATION OF STATUTE OR ORDINANCE

The violation of a state or city law is evidence of negligence, but the fact that the law was violated is not sufficient, by itself, to establish negligence. The violation of the law must be considered along with all the other evidence in this case in deciding the issue of negligence.

Whether there was a violation of a state or city law is for you to determine.

INSTRUCTION NO. 4.5

TYPES OF EVIDENCE -- DIRECT AND CIRCUMSTANTIAL

There are two kinds of evidence from which you many decide the facts of a case: direct evidence and circumstantial evidence.

Direct evidence is direct proof of a fact, for example, the testimony of an eyewitness.

Circumstantial evidence is indirect proof of a fact, that is, when certain facts lead you to conclude that another fact also exists.

You may consider both direct evidence and circumstantial evidence when deciding the facts of this case. You are allowed to give equal weight to both kinds of evidence. The weight to be given any kind of evidence is for you to decide.

INSTRUCTION NO. 4.6

OBJECTIONS TO EVIDENCE

During the trial, I have ruled on objections made by the attorneys. Objections are based on rules of law designed to protect the jury from unreliable or irrelevant evidence. It is an attorney's duty to object when he or she believes that the rules of law are not being followed. These objections relate to questions of law for me to decide and with which you need not be concerned.

INSTRUCTION NO. 4.7

EVIDENCE ADMITTED FOR LIMITED PURPOSE

During this trial, I instructed you that certain testimony [and certain exhibits] was [were] received in evidence only for a limited purpose. I instructed you that you could consider some testimony [and some exhibits] as evidence against a certain party, but not against another party. You must follow those instructions. You must consider such evidence only for the limited and specific purpose for which it was received. You cannot consider it or use it for any other purpose.

INSTRUCTION NO. 4.8

JUDICIAL NOTICE

The Court may take judicial notice of certain facts. When the Court says that it takes judicial notice of some fact, the jury must accept that fact as conclusively proved.

INSTRUCTION NO. 5.1

WEIGHT OF EVIDENCE AND CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of all witnesses who testified in this case. The weight their testimony deserves is for you to decide.

It is your exclusive right to determine whether and to what extent a witness should be believed and to give weight to that testimony according to your determination of the witness' credibility. In evaluating a witness, you may consider:

(a) the witness' appearance and demeanor on the witness stand;

(b) the manner in which a witness testified and the degree of intelligence shown;

(c) the witness' degree of candor or frankness;

(d) the witness' interest, if any, in the result of this case;

(e) the witness' relationship to either party in the case;

(f) any temper, feeling or bias shown by the witness;

(g) the witness' character as shown by the evidence;

(h) the witness' means and opportunity to acquire information;

(i) the probability or improbability of the witness' testimony;

(j) the extent to which the witness' testimony is supported or contradicted by other evidence;

(k) the extent to which the witness made contradictory statements; and

(l) all other circumstances affecting the witness' credibility.

Inconsistencies in the testimony of a witness, or between the testimonies of different witnesses, may or may not cause you to discredit the inconsistent testimony. This is because two or more persons witnessing an event may see or hear the event differently. An innocently mistaken recollection or failure to remember is not an uncommon experience. In examining any inconsistent testimony, you should consider whether the inconsistency concerns important matters or unimportant details. You should also consider whether inconsistent testimony is the result of an innocent mistake or a deliberate false statement.

INSTRUCTION NO. 5.2

DISCREDITED TESTIMONY

The testimony of a witness may be discredited by contradictory evidence or by evidence showing that at other times the witness made statements inconsistent with the witness' testimony in this trial.

If you believe that testimony of any witness has been discredited, you may give that testimony the degree of credibility you believe it deserves.

INSTRUCTION NO. 5.3

FALSE WITNESS

You may reject the testimony of a witness if you find and believe from all of the evidence presented in this case that:

1. The witness intentionally testified falsely in this trial about any important fact; or

2. The witness intentionally exaggerated or concealed an important fact or circumstance in order to deceive or mislead you.

In giving you this instruction, I am not suggesting that any witness intentionally testified falsely or deliberately exaggerated or concealed an important fact or circumstance. That is for you to decide.

INSTRUCTION NO. 5.4

EXPERT WITNESS

In this case, you heard testimony from witnesses described as experts. Experts are persons who, by education, experience, training or otherwise, have special knowledge which is not commonly held by people in general. Experts may state an opinion on matters in their field of special knowledge and may also state their reasons for the opinion.

The testimony of expert witnesses should be judged in the same manner as the testimony of any witness. You may accept or reject the testimony in whole or in part. You may give the testimony as much weight as you think it deserves in consideration of all of the evidence in this case.

INSTRUCTION NO. 5.5

OPINION OF DOCTOR

The opinion of a doctor concerning the condition of a patient may be based on observation, examination, tests or treatment of the patient, or on the patient's statements, or on both.

In deciding the weight to give the doctor's opinion, you may evaluate the patient's statements along with the findings of the doctor. The patient's statements may be evaluated in the same way you would judge the testimony of any witness.

INSTRUCTION NO. 5.6

INDEPENDENT MEDICAL EXAMINATION

In this case, the court rules allowed the plaintiff/defendant to retain the services of a doctor who conducted an examination of the plaintiff and/or reviewed the plaintiff's medical records.

The testimony of this doctor should be judged in this same manner as the testimony of any witness. You may give the testimony as much weight as you think it deserves in consideration of all the evidence in this case.

INSTRUCTION NO. 6.1

NEGLIGENCE DEFINED

Negligence is doing something which a reasonable person would not do or failing to do something which a reasonable person would do. It is the failure to use that care which a reasonable person would use to avoid injury to himself, herself, or other people or damage to property.

In deciding whether a person was negligent, you must consider what was done or not done under the circumstances as shown by the evidence in this case.

INSTRUCTION NO. 6.2

FORESEEABILITY

In determining whether a person was negligent, it may help to ask whether a reasonable person in the same situation would have foreseen or anticipated that injury or damage could result from that person's action or inaction. If such a result would be foreseeable by a reasonable person and if the conduct reasonably could be avoided, then not to avoid it would be negligence.

INSTRUCTION NO. 6.3

ALLOCATION OF NEGLIGENCE

You must determine whether any of the parties in this case were negligent and whether such negligence on the part of a party was a legal cause of plaintiff's(s') injuries/damages. If you find that at least one defendant was negligent and such negligence was a legal cause of the injuries/damages, you must determine the total amount of plaintiff's(s') damages, without regard to whether plaintiff's(s') own negligence was also a legal cause of the injuries/damages.

If you find that more than one party was negligent and the negligence of each was a legal cause of the injuries/damages, then you must determine the degree to which each party's negligence contributed to the injuries/damages, expressed in percentages. The percentages allocated to the parties must total 100%.

INSTRUCTION NO. 6.4

EFFECT OF COMPARATIVE NEGLIGENCE

If you find that plaintiff's(s') negligence is 50% or less, the Court will reduce the amount of damages you award by the percentage of the negligence you attribute to plaintiff(s).

If, on the other hand, you find that plaintiff's(s') negligence is more than 50%, the Court will enter judgment for defendant(s) and plaintiff(s) will not recover any damages.

INSTRUCTION NO. 6.5

EFFECT OF JOINT/SEVERAL LIABILITY

Any defendant found liable to plaintiff(s) to any degree may be required to pay his/her/its share of the judgment as well as the share of another/other liable defendant(s). Any defendant who pays more than his/her/its share of the judgment has the right to seek payment from another/other liable defendant(s) to the extent of the other liable defendant's(s') proportionate share of the judgment.[****]

[****] This instruction may require modification to comply with Hawaii Revised Statutes § 663-10.9 and relevant case law.

INSTRUCTION NO. 7.1

LEGAL CAUSE

An act or omission is a legal cause of an injury/damage if it was a substantial factor in bringing about the injury/damage.

One or more substantial factors such as the conduct of more than one person may operate separately or together to cause an injury or damage. In such a case, each may be a legal cause of the injury/damage.

INSTRUCTION NO. 7.2

SUPERSEDING CAUSE

A superseding cause is an act or force which relieves defendant(s) of responsibility for plaintiff's(s') injury/damage.

To be a superseding cause, an act or force must:

(1) occur after defendant's(s') conduct,

(2) be a substantial factor in bringing about the injury/damage to plaintiff(s),

(3) intervene in such a way that defendant's(s') conduct is no longer a substantial factor in bringing about the injury/damage, and

(4) not be reasonably foreseeable at the time defendant(s) acted or failed to act.

If the act or force was a normal consequence of the situation created by defendant's(s') conduct, then said act or force is not a superseding cause.

The conduct of plaintiff(s) cannot be a superseding cause.

INSTRUCTION NO. 7.3

PRE-EXISTING INJURY OR CONDITION

In determining the amount of damages, if any, to be awarded to plaintiff(s), you must determine whether plaintiff(s) had an injury or condition which existed prior to the [insert date of the incident] incident. If so, you must determine whether plaintiff(s) was/were fully recovered from the pre-existing injury or condition or whether the pre-existing injury or condition was latent at the time of the subject incident. A pre-existing injury or condition is latent if it was not causing pain, suffering or disability at the time of the subject incident.

If you find that plaintiff(s) was/were fully recovered from the pre-existing injury or condition or that such injury or condition was latent at the time of the subject incident, then you should not apportion any damages to the pre-existing injury or condition.

If you find that plaintiff(s) was/were not fully recovered and that the pre-existing injury or condition was not latent at the time of the subject incident, you should make an apportionment of damages by determining what portion of the damages is attributable to the pre-existing injury or condition and limit your award to the damages attributable to the injury caused by defendant(s).

If you are unable to determine, by a preponderance of the

evidence, what portion of the damages can be attributed to the pre-existing injury or condition, you may make a rough apportionment.

If you are unable to make a rough apportionment, then you must divide the damages equally between the pre-existing injury or condition and the injury caused by defendant(s).

INSTRUCTION NO. 7.4

SUBSEQUENT INJURIES

In determining the amount of damages, if any, to be awarded to plaintiff(s), you must also determine whether plaintiff(s) was/were injured after the [insert date of the incident] incident. If plaintiff(s) suffered injury after the subject incident, and such injury was not legally caused by the conduct of defendant(s), then you should make an apportionment of damages by determining what portion of the damages is attributable to the later injury and limit your award to the damages attributable to the injury caused by defendant(s).

If you are unable to determine, by a preponderance of the evidence, what portion of the damages can be attributed to the later injury, you may make a rough apportionment.

If you are unable to make a rough apportionment, then you must divide the damages equally between the later injury and the injury caused by defendant(s).

INSTRUCTION NO. 7.5

APPORTIONMENT FOR BOTH PRE-EXISTING AND SUBSEQUENT INJURIES

If you must apportion damages among (1) pre-existing injuries or conditions, (2) injuries caused by defendant(s), and (3) later injuries, and you are unable to determine apportionment by a preponderance of the evidence, you may make a rough apportionment. If you are unable to make a rough apportionment, then you must divide the damages equally among the injuries or conditions.

INSTRUCTION NO. 8.1

DAMAGE INSTRUCTIONS - FOR GUIDANCE ONLY

Instructions on damages are only a guide for an award of damages if you find defendant(s) responsible to plaintiff(s). The fact that the Court is instructing you on damages does not mean that defendant(s) is/are responsible to plaintiff(s). That is for you to decide.

INSTRUCTION NO. 8.2

SPECIAL DAMAGES DEFINED

Special damages are those damages which can be calculated precisely or can be determined by you with reasonable certainty from the evidence.

INSTRUCTION NO. 8.3

GENERAL DAMAGES DEFINED

General damages are those damages which fairly and adequately compensate plaintiff(s) for any past, present, and reasonably probable future disability, pain, and emotional distress caused by the injuries/damages sustained.

INSTRUCTION NO. 8.4

PAIN

Pain is subjective, and medical science may or may not be able to determine whether pain actually exists. You are to decide, considering all the evidence, whether pain did(, does and will) exist.

INSTRUCTION NO. 8.5

EMOTIONAL DISTRESS DEFINED

Emotional distress includes mental worry, anxiety, anguish, suffering, and grief, where they are shown to exist.

INSTRUCTION NO. 8.6

LOSS OF CONSORTIUM

If you find that defendant(s) is/are liable, you may allow plaintiff _____ a fair and reasonable compensation for the loss and impairment of _____'s ability to perform services as wife/husband, because of her/his injuries.

In determining the amount of such compensation, you are to consider the loss and impairment of her/his companionship, aid, assistance, comfort and society, and services to her husband/his wife in performing her/his domestic and household functions, if any.

The services provided by a wife/husband to her husband/his wife may often be of such character that no one can say what they are worth. The relationship between spouses is a special and unique one, and the actual facts of the case, considered together with your own experience, must guide you in deciding what amount would fairly and justly compensate the husband/wife for his/her loss.

INSTRUCTION NO. 8.7

LIFE EXPECTANCY

The life expectancy of plaintiff(s) may be considered by you in determining the amount of damages, if any, which he/she/they should receive for permanent injuries and future expenses and losses.

INSTRUCTION NO. 8.8

ARGUMENT RE DAMAGES

In presenting his/her argument to you on the amount, if any, which should be awarded to plaintiff(s) as damages, the attorney for plaintiff(s) has proposed to you figures which he/she arrived at by mathematical calculations (and has shown you those figures on a chart). After first suggesting that a dollar value per hour or day or month or year be given to an item such as pain, disability, emotional distress and so forth, he/she multiplied that dollar value by a certain number of hours or days or months or years and came up with a total figure as an amount of damages for such items. Neither the chart nor what the attorney has said as to the dollar values or figures for measuring such items of damages is evidence. The law permits this kind of argument to be made, but you must remember argument is not evidence. The law gives you no way to mathematically calculate such items of damages and leaves them to be fixed by you as your common sense and good judgment dictate, based on the nature and extent of plaintiff's(s') injuries/damages under the evidence in this case.

INSTRUCTION NO. 8.9

ELEMENTS OF DAMAGES

If you find for plaintiff(s) on the issue of liability, plaintiff(s) is/are entitled to damages in such amount as in your judgment will fairly and adequately compensate him/her/them for the injuries which he/she/they suffered. In deciding the amount of such damages, you should consider:

1. The extent and nature of the injuries he/she/they received, and also the extent to which, if at all, the injuries he/she/they received are permanent;

2. The deformity, scars and/or disfigurement he/she/they received, and also the extent to which, if at all, the deformity, scars and/or disfigurement are permanent;

3. The reasonable value of the medical services provided by physicians, hospitals and other health care providers, including examinations, attention and care, drugs, supplies, and ambulance services, reasonably required and actually given in the treatment of plaintiff(s) and the reasonable value of all such medical services reasonably probable to be required in the treatment of plaintiff(s) in the future;

4. The pain, emotional suffering, and disability which he/she/they has/have suffered and is/are reasonably probable to suffer in the future because of the injuries, if any; and

5. The lost income sustained by plaintiff(s) in the past and the lost income he/she/they is/are reasonably probable to

sustain in the future.

INSTRUCTION NO. 8.10

PAIN AND SUFFERING

Plaintiff(s) is/are not required to present evidence of the monetary value of his/her/their pain or emotional distress. It is only necessary that plaintiff(s) prove the nature, extent and effect of his/her/their injury, pain, and emotional distress. It is for you, the jury, to determine the monetary value of such pain or emotional distress using your own judgment, common sense and experience.

INSTRUCTION NO. 8.11

SPECULATIVE DAMAGES

Compensation must be reasonable. You may award only such damages as will fairly and reasonably compensate plaintiff(s) for the injuries or damages legally caused by defendant's(s') negligence.

You are not permitted to award a party speculative damages, which means compensation for loss or harm which, although possible, is conjectural or not reasonably probable.

INSTRUCTION NO. 8.12

PUNITIVE DAMAGES

If you award plaintiff(s) any damages, then you may consider whether you should also award punitive damages. The purposes of punitive damages are to punish the wrongdoer and to serve as an example or warning to the wrongdoer and others not to engage in such conduct.

You may award punitive damages against a particular defendant only if plaintiff(s) have proved by clear and convincing evidence that the particular defendant acted intentionally, willfully, wantonly, oppressively or with gross negligence. Punitive damages may not be awarded for mere inadvertence, mistake or errors of judgment.

The proper measure of punitive damages is (1) the degree of intentional, willful, wanton, oppressive, malicious or grossly negligent conduct that formed the basis for your prior award of damages against that defendant and (2) the amount of money required to punish that defendant considering his/her/its financial condition. In determining the degree of a particular defendant's conduct, you must analyze that defendant's state of mind at the time he/she/it committed the conduct which formed the basis for your prior award of damages against that defendant. Any punitive damages you award must be reasonable.

INSTRUCTION NO. 8.13

PUNITIVE DAMAGES (DEFINITION OF "WILLFUL")

An act is "willful" when it is premeditated, unlawful, without legal justification, or done with an evil intent, with a bad motive or purpose, or with indifference to its natural consequences.

INSTRUCTION NO. 8.14

PUNITIVE DAMAGES (DEFINITION OF "WANTON")

An act is "wanton" when it is reckless, heedless, or characterized by extreme foolhardiness, or callous disregard of, or callous indifference to, the rights or safety of others.

INSTRUCTION NO. 8.15

PUNITIVE DAMAGES (DEFINITION OF "OPPRESSIVE")

An act is "oppressive" when it is done with unnecessary harshness or severity.

INSTRUCTION NO. 8.16

PUNITIVE DAMAGES (DEFINITION OF "MALICIOUS")

An act is "malicious" when it is prompted or accompanied by ill will or spite.

INSTRUCTION NO. 8.17

PUNITIVE DAMAGES (DEFINITION OF "GROSS NEGLIGENCE")

Gross negligence is conduct that is more extreme than ordinary negligence. It is an aggravated or magnified failure to use that care which a reasonable person would use to avoid injury to himself, herself, or other people or damage to property. But gross negligence is something less than willful or wanton conduct.

INSTRUCTION NO. 8.18

MITIGATION OF DAMAGES

Any plaintiff claiming damages resulting from the wrongful act of a defendant has a duty under the law to use reasonable diligence under the circumstances to mitigate or minimize those damages.

If you find plaintiff(s) suffered damages, plaintiff(s) may not recover for any damages which he/she/it/they could have avoided through reasonable effort. If you find that plaintiff(s) unreasonably failed to mitigate or lessen his/her/its/their damages, you should not award those damages which he/she/it/they could have avoided.

You are the sole judge of whether plaintiff(s) acted reasonably in mitigating his/her/its/their damages. Plaintiff(s) may not sit idly by when presented with a reasonable opportunity to reduce his/her/its/their damages. However, plaintiff(s) is/are not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating his/her/its/their damages. Defendant(s) has/have the burden of proving the damages which plaintiff(s) could have mitigated.

You must consider all of the evidence in light of the particular circumstances of the case in deciding whether defendant(s) have satisfied his/her/its/their burden of proving that plaintiff's(s') conduct was not reasonable.

INSTRUCTION NO. 9.1

CONDUCT OF JURY

When you retire to the jury room to begin your deliberations, your first duty will be selection of a foreperson to preside over the deliberations and to speak on your behalf in court.

The foreperson's duties are:

1. To keep order during the deliberations and to make sure that every juror who wants to speak is heard;

2. To represent the jury in communications you wish to make to me; and

3. To sign, date and present the jury's verdict to me.

In deciding the verdict, all jurors are equal and the foreperson does not have any more power than any other juror.

After you select a foreperson, you will proceed to discuss the case with your fellow jurors and reach agreement on a verdict, if you can. You may take as much time as you feel is necessary for your deliberations.

Each of you must decide the case for yourself, but only after you have considered the views of you fellow jurors. Do not be afraid to change your opinion if you think you are wrong. But do not come to a decision simply because other jurors think it is a right decision, or simply to get the case over with.

INSTRUCTION NO. 9.2

EXHIBITS IN THE JURY ROOM

During this trial, items were received in evidence as exhibits. These exhibits will be sent into the jury room with you when you begin to deliberate.

INSTRUCTION NO. 9.3

VERDICT

Remember that you are the judges of the facts in this case. Your only interest is to seek the truth from the evidence presented.

From the time you retire to the jury room to begin your deliberations until you complete your deliberations, it is necessary that you remain together as a body. You should not discuss the case with anyone other than your fellow jurors. If it becomes necessary for you to communicate with me during your deliberations, you may send a note by the bailiff.

Your verdict will consist of answers to the questions on the verdict form. You will answer the questions according to the instructions I have given you and according to the directions contained in the verdict form.

At least ten of you must agree on each answer required by the verdict form. The same ten jurors need not agree on all answers, but at least ten jurors must agree on each answer. Each of the ten must be able to state, when you return to the courtroom after a verdict is reached, that his or her vote is expressed in the answer on the verdict form.

As soon as ten or more of you agree upon each answer required by the directions in the verdict form, the form should be dated and signed by your foreperson. The foreperson will then notify the bailiff by a written communication that (1) the jury

has reached a verdict; and (2) at least ten of the jurors have agreed as to each answer required by the verdict form. The bailiff will then arrange to have you return with the verdict form to the courtroom.

Bear in mind that you are not to reveal to the court or anyone else how the jury stands on the verdict until at least ten of you (and I repeat, at least ten of you) have agreed on it.